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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Morgan City-03-013]

uscg-2004-16938-25

RIN 1625 - AA00

Safety Zone; ~~ATCHAFALAYA RIVER, MORGAN CITY, LA~~ ^{Atchafalaya River, Morgan City} ¹⁸

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters between Point Au Fer and the Eugene Island Safe Water Marker in the Atchafalaya River Entrance Channel. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with a ruptured natural gas pipeline explosion and pipeline exposure. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City, or a designated representative.

DATES: This rule is effective from 12:54 a.m. CST on December 02, 2003 through 11:00¹⁸ p.m. CST on December 08, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Morgan

City-03-013] and are available for inspection or copying at Marine Safety Office Morgan City, 800 David Drive, Morgan City, Louisiana, 70380 between 8 a.m. CST and 4 p.m. CST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT (Lieutenant) Norm Witt, Marine Safety Office Morgan City, at (985) 380-5320.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553 (d) (3), good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with a natural gas pipeline rupture.

Background and Purpose

At approximately 12:28 a.m. CST on December 02, 2003, in position N28-18.12, W091-26.0 ^{the} ~~The~~ M/V Tom James dredged over and ruptured a natural gas pipeline causing an explosion and pipeline exposure in the Atchafayala River Entrance Channel.

Discussion of Rule

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The Coast Guard is establishing a temporary safety zone for all waters between Point Au Fer and the Eugene Island Safe Water Marker in the Atchafalaya River Entrance Channel extending the entire width of the waterway. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City, or a designated representative.

This rule is effective from 12:54 a.m. CST on December 02, 2003 through 11:00 p.m. CST on December 08, 2003. Vessels desiring to transit through the zone during enforcement hours must request permission to do so from the Captain of the Port Morgan City, or a designated representative. The Captain of the Port Morgan City will inform the public via broadcast notice to mariners upon the reopening of the waterway.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3 (f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6 (a) (3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant"

under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal. This rule is effective from 12:54 a.m. CST on December 02, 2003 through 11:00 p.m. CST on December 08, 2003. Vessels desiring to transit through the zone during enforcement hours must request permission to do so from the Captain of the Port Morgan City, or a designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 - 612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small

entities: the owners or operators of vessels intending to transit through all waters between Point Au Fer and the Eugene Island Safe Water Marker in the Atchafalaya River Entrance Channel between 12:54 a.m. CST on December 02, 2003 through 11:00 p.m. CST on December 08, 2003. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time, If you are a small business entity and are significantly affected by this regulation, please contact LT Norm Witt, Marine Safety Office Morgan City, at (985) 380-5320.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 - 3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3 (a) and 3 (b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the

Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in NEPA.

Under figure 2-1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

Part 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50

U.S.C. 191, ⁴⁸~~495~~; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-¹⁵⁴~~154~~ is added to read as follows:

§ 165.T08- ¹⁵⁴Safety Zone; Atchafalaya River, Morgan City,

LA

(a) Location. The following area is a safety zone: All waters between Point Au Fer and the Eugene Island Safe Water Marker in the Atchafalaya River Entrance Channel.

(b) Effective date. This rule is effective from 12:54 a.m. CST on December 02, 2003 through 11:00 p.m. CST on December 08, 2003.

~~(c) Periods of Enforcement. This rule will be in effect 24 hours a day until cancelled.~~ ⁴³

⁵⁴~~(d)~~ Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Morgan City.

(2) Vessels requiring entry into or passage through the safety zone must request permission from the Captain of the Port Morgan City, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (985) 380-5320.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Morgan City and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

DATED: December 02, 2003

A handwritten signature in dark ink, appearing to read "S.P. Garrity", is written over a horizontal line.

S.P. GARRITY
Captain, U.S. Coast Guard
Captain of the Port Morgan City